

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(2.)

FAO-CARB-25-2022 (O&M)
Date of Decision:-25.08.2022.

M/s Empathy Infra and Engineering Pvt. Ltd.

.....Appellant

Versus

M/s POSCO E & C Indian Pvt. Ltd. and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Ms. Kanupriya Tiwari, Mr. Raghav Kapoor and
Mr. Om Srivastav, Advocates for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral)

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Prayer in this application is for condonation of delay of six days in filing the appeal which is stated to be neither intentional nor deliberate.

Prayer made in this application is supported by the affidavit of the Director of the appellant-Company.

In the light of the above, the present application is allowed and delay of six days in filing the appeal stands condoned.

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Challenge in this appeal is to the order dated 18.01.2022 passed by the Presiding Judge, Exclusive Commercial Court at Gurugram, vide which an application moved by respondent No.1 under Section 9 of the Arbitration and Conciliation Act, 1996, wherein an interim prayer made for

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securing the interest of the petitioner has been accepted and a direction has been issued to the respondent (the appellant herein) to deposit the entire amount of ₹ 9,32,50,000/- against the three Advance Bank Guarantees which were submitted by the appellant at the time of entering into a contract with respondent No.1 along with interest @ 6% per annum w.e.f. 22.03.2016 till deposit in the Court within a period of one month from the date of certified copy of the judgment, has been passed.

It is the contention of the learned counsel for the appellant that more than the said amount which has been sought to be deposited on the part of the appellant material is lying at the site, which aspect has not been taken into consideration. This argument of the learned counsel for the appellant cannot be accepted as there is no such pleading and further there is no documents placed on record to substantiate the said contention.

That apart, as per the settled proposition of law, once the Bank Guarantees have been given, there is an absolute right upon the person to whom the said Bank Guarantees are given to get them encashed. Present is a case where the Bank Guarantees which have been given are not from the Competent Bank authorized to issue such type of Bank Guarantee. *Prima facie* opinion has been reached by the trial Court on the basis of the pleadings and the documents placed on record that the Bank Guarantees have been submitted by the appellant with an oblique motive and in connivance with the Bank. It is under these circumstances that the Court has proceeded to direct the appellant to deposit the entire amount of ₹ 9,32,50,000/- against the Advance Bank Guarantees along with interest, as has been mentioned above.

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The order as has been passed by the learned Exclusive Commercial Court cannot be said to be not based upon any justifiable grounds or reasons nor can it be said that the order is without any basis.

We do not find any error in the impugned order which would call for any interference by this Court.

The appeal, therefore, stands dismissed.

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In view of the dismissal of the main appeal, this application for stay of the order dated 18.01.2022 has been rendered infructuous and is disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

August 25, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No